

STATE OF MICHIGAN
COURT OF APPEALS

JOE ILOWSKI, d/b/a ILOWSKI SAUSAGE
COMPANY,

Plaintiff-Appellant,

v

WILLIAM C. KLAASSEN,

Defendant-Appellee,

and

ILIE DINICA, d/b/a ID QUALITY HOME
IMPROVEMENT, RICHARD LENTZ, a/k/a
RICHARD LENTZ, SR., d/b/a MOLDAVIAN
COMPANY, and CHINA TOWNSHIP,

Defendants.

UNPUBLISHED
August 14, 2001

No. 222569
St. Clair Circuit Court
LC No. 97-002208-CK

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant William C. Klaassen. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff embarked on a project to alter and expand his business site in order to sell product on a wholesale basis. The work performed did not comply with the building permit issued or with various construction codes. Plaintiff expressed his concern to Klaassen, the building inspector for defendant China Township. Klaassen allegedly told plaintiff that he would keep his eye on the project while plaintiff was out of town. When plaintiff returned he was dissatisfied with the work performed to date. Eventually, Klaassen issued a stop work order because various required inspections had not taken place. A private inspector hired by plaintiff discovered numerous code violations on the project.

Plaintiff filed suit, naming numerous parties as defendants. Plaintiff alleged that Klaassen was grossly negligent in failing to insure that the contractor performed in accordance with building code requirements as well as state and federal requirements. Klaassen moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that he enjoyed immunity for the performance of his official duties, MCL 691.1407(2), and that he owed no duty to plaintiff because his duty was for the benefit of the public at large. The trial court granted the motion, finding that no special relationship existed between plaintiff and Klaassen. The trial court did not address the issue of gross negligence.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The existence of a duty is a question of law for the court. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 358; 584 NW2d 345 (1998). If the duty of a public agency or official arises from official authority, the duty is for the benefit of the public at large. A public duty is owed to a specific individual only when performance of the duty would affect that person in a different manner than it would the public. *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286, 300; 618 NW2d 98 (2000). A public official can be held liable for nonfeasance if: (1) through promises or action, the official assumed an affirmative duty to act on behalf of the injured party; (2) the official knew that inaction could lead to harm; (3) there was direct contact between the official and the injured party; and (4) the injured party justifiably relied on the official taking action. *Gazette v Pontiac (On Remand)*, 221 Mich App 579, 583; 561 NW2d 879 (1997).

Plaintiff argues that the trial court erred by granting Klaassen's motion for summary disposition. We disagree and affirm. An enforcing agency is required to periodically inspect projects undertaken pursuant to building permits issued by the agency to ensure that the projects are in compliance with the conditions of the permits and with all applicable codes and ordinances. These inspections are for the purpose of enforcing laws and ordinances related to the construction of buildings and other structures. MCL 125.1512(1) and (2). Klaassen's duty arose from official authority, and thus was for the benefit of the public at large. *McGoldrick, supra*; see also *Jones v Wilcox*, 190 Mich App 564, 568-569; 476 NW2d 473 (1991). No evidence showed that Klaassen's representation to plaintiff that he would keep his eye on plaintiff's project was anything more than an assertion that he would do his official duty. Klaassen did not assume an affirmative duty to ensure that the contractor complied with all applicable codes. He made no explicit assurances on which plaintiff could justifiably rely. *Koenig v South Haven*, 221 Mich App 711, 730; 562 NW2d 509 (1997), rev'd on other grounds 460 Mich 667; 597 NW2d 99 (1999). Klaassen's performance of his duty would not affect plaintiff in a different manner than it would affect the public. The trial court correctly granted summary disposition in favor of Klaassen. *McGoldrick, supra*; *Gazette, supra*.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Richard Allen Griffin